

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION JOINT APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT AND TRANSPORTATION**

**Call to Order:** By **CHAIRMAN BOB DAVIES**, on January 5, 2001 at  
8:00 A.M., in Room 317-B Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Bob Davies, Chairman (R)  
Sen. Jack Wells, Vice Chairman (R)  
Rep. John Brueggeman (R)  
Rep. Monica Lindeen (D)  
Sen. Corey Stapleton (R)

**Members Excused:** None.

**Members Excused:** Sen. Bea McCARTHY (D)

**Staff Present:** Greg DeWitt, Legislative Branch  
Mary Beth Linder, OBPP  
Cyndie Lockett, Committee Secretary  
Amy Sassano, OBPP

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: Introductions and Orientation,  
1/5/2001; Appellate Defender  
Commission, 1/5/2001  
Executive Action: Chiropractic Legal Panel

**{Tape : 1; Side : A; Approx. Time Counter : 0 - 30}**

**ORIENTATION**

**Chairman Davies** explained to the sub committee how he was going to run the hearings. He also explained the need for the members to fill out a Committee Proxy when they are going to be absent. He told the committee it's important to address the Chair before asking questions or giving comments. Chairman Davies asked the subcommittee and staff to introduce themselves.

**Greg DeWitt, Legislative Fiscal Division (LFD)**, helped Chairman Davies, as well as the subcommittee by explaining the budget process. First he explained the book (Provided by Legislative Fiscal Division) that was given to the subcommittee regarding the financial records of each agency. He explained in the book that each agency is grouped as a whole. **Mr. DeWitt** talked about the tables in the book and how they represent the agency budget. He explained each category stated in the book. Once **Mr. DeWitt** explained the booklet and how it would help in the subcommittee he fielded questions from the subcommittee members.

**Sen. Wells** asked **Mr. DeWitt** if the subcommittee was taking a final look at these agencies and whether they had to make a decision right away. **Mr. DeWitt** explained that the subcommittee had options in deciding on each agency. First you open agencies for hearings; then each agency will discuss what they do and why they need the money. Executive action can take place after the testimony, but if there needs to be more discussion then the subcommittee has the option.

**Mary Beth Linder, Office of Budget and Program Planning (OBPP)**, asked **Mr. DeWitt** how the **LFD** was going to fix the conflict between the budget in the book and Governor Martz's budget. **Mr. DeWitt** responded by assuring that the two agencies being discussed today were not affected. He did say he would have updated tables that reflected Governor Martz's budget for the committee to look at and work from.

**Rep. Lindeen** had a question regarding the process of bill HB 2 once they decide on the Executive Action and how final is subcommittee's process. **Mr. DeWitt** explained it can be amended throughout the legislative process. He also told her if the subcommittee does close any agency they can always reopen it. **Mr. DeWitt** introduced the first agency, the Appellate Defender Commission. The agency was found on page A-186 in the **LFD** Workbook. **LFD** had no issues with this agency but had one comment regarding the agency personnel services increase. The primary

reason that the request is less than the amount authorized by the 1999 legislature is that the staff turnover during the base year meant that positions were filled at lower salary levels.

**{Tape : 1; Side : B; Approx. Time Counter : 30 - 60}**

**Chairman Davies** wanted **Mr. DeWitt** to explain vacancy savings. **Mr. DeWitt** replied that the Governor put the vacancy savings in as a reduction on the Present Law Adjustments table. Agencies with less than 20 FTE are exempt from vacancy savings. Therefore, the personnel services request for the Appellate Defender therefore, is fully funded.

**Chairman Davies** then asked for testimony from the Appellate Defender.

#### **HEARING ON APPELLATE DEFENDER**

**Chad Wright Appellate Defender**, gave information on the agency he works for. They represent the poor people who have been convicted of crimes. The right to appeal criminal convictions in Montana is set up by statute and is supported by the US and Montana constitutions. The Appellate Defender's office was created by statute in 1991 (46-8-210, MCA) for problems with conflict cases where the criminal defendant was convicted of a crime but feels they were misrepresented. The Majority of their cases (90%) are conflict cases where the defendant needs to appeal and be represented by a new council. They work with judges, the attorney general, and criminal defense attorneys. They use an objective point system which is set-up by a national group. It is based on length of transcripts and the amount of work conducted. He gave examples of some different attorneys and their costs with two cases from Gallatin county.

**Sen. Wells** asked **Mr. Wright** if the Appellate Defender goes before the District Court. The only time that may happen is with DNA evidence. He then asked how many total courts the Appellate office does cover. **Mr. Wright** commented there were 22 judicial districts and 30-40 judges who cover these districts.

**Mr. Wright** commented their office is very efficient, opening 36 cases and closing 39 last year. Cases range from felony DUI cases up to death penalty cases.

**Sen. Stapleton** asked **Mr. Wright** who makes up the Appellate defender commission. **Mr. Wright** says that it is made up of 5 people, 3 of which are attorneys, one district court judge, and one lay person appointed by the governor. They help with hiring

and also are involved with how the office is run. Sen. Stapleton asked why in the budget there is an operating expense increase of almost 20%. **Mr. DeWitt** explained the reasons and justifications are in the book. **Mr. Wright** explained that they need training which takes place out of state.

**Chairman Davies** asked **Mr. Wright** about the point system and what constitutes a point. **Mr. Wright** explained that 500 pages of transcript for one appeal equals one point. For each additional 500 pages, a point is given. Complexity, of cases may earn more points. (Measure of the volume of work, and the quality of work.) Chairman Davies asks how this system was working before the Appellate Defender. Mr. Wright said the judges would turn to someone locally and then hire the counsel. This counsel would be paid out of state funds.

*{Tape : 2; Side : A; Approx. Time Counter : 0 - 30}*

**Mr. DeWitt** told the subcommittee he would explain the process of Executive Action once the testimony was over. He reminds the subcommittee that it only happens if the committee is ready to take action. If the subcommittee decided not to take action then they could discuss or do research and decide on Executive Action on a later date. The subcommittee discussed that they were not ready to take action because **Sen. Stapleton**, for one, would like more detail on Appellate Defender budget.

The subcommittee took a ten minute break, and **Sen. Stapleton** said he understood the Appellate Defender saved money and he had no further reason to hold up on Executive Action. **Amy Sassano, OBPP**, explained the Appellate Defender budget to **Sen. Stapleton** during the break and clarified what he was questioning.

#### HEARING ON CHIROPRACTIC LEGAL PANEL

**Chairman Davies** introduced Chiropractic Legal Panel head **Mary Lou Garrett** and invited to give her testimony. **Mary Lou Garrett** explained how small her budget is and how a malpractice case through the legal panel before it goes to the courts. The legal panel is made up of three attorneys and three chiropractics which **Mary Lou Garrett** selects. This panel reviews all evidence and then decides if the patient can go to court. This panel asks two questions: was there malpractice and was the patient injured? Ms. Mary Lou Garrett explained she works by contract, and her fee is set by the Chief Justice. She said she gets about three claims a year.

Chairman Davies, called for Executive Action.

**EXECUTIVE ACTION ON CHIROPRACTIC LEGAL PANEL**

**Motion/Vote:** REP. LINDEEN moved that BASE BUDGET AND STATEWIDE BUDGET BE ADOPTED. Motion carried 5-0.

**Motion/Vote:** REP. LINDEEN moved that DP1 be accepted. Motion carried 5-0.

**Motion/Vote:** Sen. Wells moved that CHIROPRACTIC LEGAL PANEL BUDGET BE ADOPTED. Motion carried 5-0.

**ADJOURNMENT**

Adjournment: 10:15 A.M.

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REP. BOB DAVIES, Chairman

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CYNDIE LOCKETT, Secretary

BD/CL

**EXHIBIT** (jgh03aad)